

Internal Revenue Service

memorandum

CC:TL-N-7294-89

VWATERS

date: AUG 24 1989

to: District Counsel, Los Angeles W:LA
Attn: Arthur A. Oshiro

from: Senior Technician Reviewer
Tax Shelter Branch CC:TL:TS

subject: [REDACTED] - Statute of Limitations

This memorandum is in response to your May 31, 1989, request for post-review of an advisory opinion issued by your office regarding the above-mentioned case.

ISSUES

1. Whether the statute of limitations is open for assessing a non-TEFRA partnership adjustment under a valid Form 872-A indefinite statute extension, even if the statute of limitations has expired with respect to the TEFRA partnership item?

2. Whether the statute of limitations is open for assessment of an agreed TEFRA partnership item under a valid Form 872-A, even though the Service did not specifically identify the TEFRA partnership item in the Form 872-A and failed to assess the agreed tax deficiency arising from the TEFRA partnership item within the one year period provided by I.R.C. § 6229(f)?

CONCLUSIONS

1. We agree with your conclusion that the Service may assess a deficiency arising from a non-TEFRA partnership adjustment notwithstanding the fact that the statute of limitations has expired with respect to a TEFRA partnership item.

2. We disagree with your conclusion that the Service may make an assessment of an agreed TEFRA partnership item since the Service failed to make the assessment within the one-year statutory period of section 6229(f). The Form 872-A executed by the parties did not extend the statutory period for assessment of the nonpartnership items because it did not include specific language referencing partnership items.

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FACTS

The taxpayers, [REDACTED], claimed losses on their [REDACTED] individual income tax return for two partnerships, one a TEFRA partnership [REDACTED] and the other a non-TEFRA partnership [REDACTED]. The Service conducted audits of the partnerships and disallowed losses for both partnerships. The TEFRA and non-TEFRA items were examined and handled separately in accordance with existing procedures on the processing of TEFRA and non-TEFRA items.

The [REDACTED] is one of the many partnerships audited by the Service in the tax shelter project known as "[REDACTED]". On October 7, 1985, in connection with the audit of the [REDACTED], the Service timely obtained an indefinite statute extension using Form 872-A, Special Consent to Extend the Time to Assess Tax.

The [REDACTED] is one of the many partnerships audited by the Service in the tax shelter project known as "[REDACTED]". The [REDACTED] is a calendar year partnership. The partnership was granted an extension of time for filing its [REDACTED] tax return. On [REDACTED], the taxpayers executed a Form 1902, Report of Individual Income Tax Examination Changes, and a Form 906, Closing Agreement, in an attempt to settle the [REDACTED] issues. An authorized representative of the Service executed the closing agreement on behalf of the Service on [REDACTED]. The Service has never assessed the tax shown on the Form 1902, and more than one year has elapsed since the taxpayers and the Service entered into the closing agreement. At the time the partnership items became nonpartnership items as a result of the closing agreement, the statutory period for assessing nonpartnership items was open under the indefinite statute extension agreement. The extension agreement did not provide specific language referencing partnership items.

DISCUSSION

With respect to the first issue, the taxpayers executed a valid Form 872-A, Special Consent to Extend the Time to Assess Tax. The Form 872-A effectively extended the statutory period for assessing non-partnership items even though the statutory period for assessing partnership items had already expired. The statutory period for assessing nonpartnership items is provided in section 6501. The statutory period for assessing TEFRA partnership items, however, is provided in section 6229(a). Section 6229(a) sets out a separate period of limitations for partnership items, while section 6501 refers only to nonpartnership items. We agree with your conclusion that the expiration of the statutory period for assessing partnership items has no impact on the Service's ability to assess any

nonpartnership items. Accordingly, the statute of limitations is open for the issuance of a statutory notice of deficiency and the assessment of the deficiency attributable to the nonpartnership item since the execution of the Form 872-A effectively extended the statutory period.

With respect to the second issue, we believe that the statutory period for assessment has expired. The facts indicate that the Service and the taxpayers entered into a closing agreement. This closing agreement was executed on behalf of the Service on [REDACTED]. Section 6231(b) provides in pertinent part that a partnership item will be converted to a nonpartnership item for a particular partner as of the date the Service and the partner enter into a settlement agreement with respect to such items. Section 6229(f) is the specific provision in the TEFRA statute of limitations for converted items. Items which become nonpartnership items must be assessed within one year after the date on which the items become nonpartnership items. In the present case, the Service should have assessed the converted items before [REDACTED]. The Service is, therefore, precluded from assessing the converted items because the statutory period has expired.

The Form 872-A executed did not extend the statutory period for assessing nonpartnership items. The Form 872-A was executed pursuant to section 6501(c)(4). Any extension under section 6501(c)(4) must expressly provide that it extends the period to assess tax attributable to partnership items. I.R.C. § 6229(b)(2). Therefore, a general extension agreement with a partner under section 6501(c)(4) without specific language referencing partnership items will not extend the TEFRA statute. In addition, where the extension specifically references TEFRA partnership items, the Service's position is that the period of limitations will be extended notwithstanding the fact that the items subsequently convert to nonpartnership items. Accordingly, if the Form 872-A had expressly provided that it extended the period of limitations for assessing partnership items, the Service could have assessed the items subsequent to their conversion to nonpartnership items.

Unlike the statutory period under section 6229(b)(2), the execution of a Form 872-A agreement to extend the period of limitations for nonpartnership items will not serve to extend the period of limitations of section 6229(f). Although we agree with your conclusion that the one year statutory period of section 6229(f) may be extended pursuant to an amendment provided by the Technical and Miscellaneous Revenue Act of 1988, that amendment has not yet been implemented institutionally. We believe the TAMRA amendment to section 6229(f) requires a specific agreement to extend the one year period of limitations with respect to converted partnership items. In order to implement the

amendment, the Service has created a new form, Form 872-F, which must be executed to extend the statutory period of section 6229(f). Form 872-F, however, will not be distributed until the requisite delegation order is executed.^{1/}

If you have any questions regarding this matter, please contact Vada Waters at (FTS) 566-3289.


CURTIS G. WILSON

^{1/} Until the delegation order approving Form 872-F is issued, the statutory period for assessing nonpartnership items can only be extended pursuant to section 6501(c)(4) where the extension agreement makes specific reference to partnership items.